COMMISSION REGULATION (EEC) No 2164/91

of 23 July 1991

laying down provisions for the implementation of Article 5 (2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties [1], and in particular Article 10 (2) thereof,

Whereas Commission Regulation (EEC) No 2380/89 [2] laid down provisions for the implementation of Article 5 (2) of Regulation (EEC) No 1697/79; whereas it is due to expire on 1 September 1991, two years after its entry into force; whereas its validity was restricted in order that it might be examined in the light of experience; whereas such examination indicates that the procedural rules which constitute the major part of the implementing provisions require no amendment;

Whereas in the interests of clarity the provisions of Regulation (EEC) No 2380/89 should be incorporated in a new Regulation not restricted in validity;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Duty Free Arrangements,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down provisions for the implementation of Article 5 (2) of Regulation (EEC) No 1697/79, hereinafter referred to as the 'basic Regulation'.

Article 2

The competent authority of the Member State in which the error was committed or noticed and which resulted in insufficient duty being collected shall itself decide not to take action for the post-clearance recovery of the uncollected duties:

(a) in cases in which preferential tariff treatment has been applied in the context of a tariff quota or an allocated tariff ceiling when the limits laid down by that quota or tariff ceiling were reached at the time of acceptance of the customs declaration without that fact having, before the release for free circulation of the goods in question, been published in the *Official Journal of the European Communities* or, where such fact is not published, been made known in an appropriate manner in the Member State concerned, the person liable having for his part acted in good faith and observed all the provisions laid down by the rules in force as far as his customs declaration is concerned;

(b) in cases in which it considers that the conditions laid down in Article 5 (2) of the basic Regulation are fulfilled and provided that the amount not collected from the person concerned in consequence of the same error and relating, where applicable, to a number of import or export operations, is less than ECU 2 000;

(c) in cases in which the Member State to which the said authority is subject has been so authorized in accordance with Article 8.

Article 3

1. Each Member State shall send the Commission a list of the cases in which the provisions of Article 2 (a) (b) and (c) have been applied, giving a short summary of each case.

2. The list referred to in paragraph 1 shall be forwarded during the first and third quarters of each year for all cases where a decision not to recover was taken during the preceding half-year.

3. The Commission shall circulate the lists to all other Member States.

4. The lists shall be examined periodically by the Committee on Duty Free Arrangements.

Article 4

Where, other than in the cases referred to in Article 2, the competent authority of the Member State in which the error was committed either considers that the conditions laid down in Article 5 (2) of the basic Regulation are fulfilled or is in doubt as to the precise scope of the criteria of that provision with regard to a particular case, that authority shall submit the case to the Commission, so that a decision may be taken in accordance with the

[1] OJ No L 197, 3. 8. 1979, p. 1.
[2] OJ No L 225, 3. 8. 1989, p. 30.

procedure laid down in Articles 5 to 7. The relevant documents submitted to the Commission shall contain all the information required to enable a comprehensive examination of the case to be carried out.

As soon as its receives the relevant documents the Commission shall inform the Member State concerned accordingly.

Should it be found that the information supplied by the Member State is not sufficient to enable a decision to be taken on the case concerned in full knowledge of the facts, the Commission may request that additional information be supplied.

Article 5

Within 15 days following receipt of the documents referred to in the first paragraph of Article 4 the Commission shall forward a copy thereof to the Member States.

Consideration of the case in question shall be included as soon as possible on the agenda of the meeting of the Committee on Duty Free Arrangements.

Article 6

After consulting a group of experts composed of representatives of all Member States, meeting within the framework of the Committee on Duty Free Arrangements to consider the case in question, the Commission shall decide whether or not the circumstances under consideration are such that no action need be taken for recovery of the duties concerned, or that such is not the case.

Such decision shall be taken within six months of the date on which the documents referred to in the first paragraph of Article 4 are received by the Commission. Where the Commission has found it necessary to request additional information from the Member State in order that it may give a ruling, the period of six months shall be extended by a period equivalent to that between the date the Commission sent the request for additional information and the date it received that information.

Article 7

The Member State concerned shall be notified of the decision referred to in Article 6 as soon as possible and in any event within 30 days of the expiry of the period specified in Article 6.

A copy of the decision shall be sent to the other Member States.

Article 8

Where it is established by the decision referred to in Article 6 that the circumstances under consideration are such that no action need be taken for recovery of the duties concerned, the Commission may, under conditions which it shall determine, authorize one or more Member States to refrain from taking action for the recovery of duties in cases involving comparable issues of fact and of law.

In such a case, the decision referred to in Article 6 shall also be notified to each Member State so authorized.

Article 9

If the Commission fails to take a decision within the period referred to in Article 6 or fails to notify a decision to the Member State concerned within the period referred to in Article 7, the competent authorities of that Member State shall not recover the duties in question.

Article 10

This Regulation shall enter into force and shall apply from 1 September 1991.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission